WILLIAM MILTON, JR., CORDELL
WELDON EUGENE MORGAN
MYRNA JUNE MORGAN
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IBLA 80-106, 80-335
80-338, 80-339 Decided October 27, 1981

Appeals from decisions of the Nevada State Office, Bureau of Land Management rejecting Indian allotment applications N-25334, N-26379, N-26380, N-26382, N-26384, N-26385, N-26386, and N-26387.

Affirmed.

1. Classification and Multiple Use Act of 1964 -- Indian Allotments on Public Domain: Lands Subject to -- Public Records -- Segregation

   Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

2. Act of February 8, 1887 -- Indian Allotments on Public Domain: Lands Subject to

   Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act

because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

3. Withdrawals and Reservations: Effect of

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

APPEARANCES: William Milton, Jr., Cordell, Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

These appeals are taken from decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting eight allotment applications (N-25334, N-26379, N-26380, N-26382, N-26384, N-26385, N-26386, and N-26387) filed for Indian allotments on public lands in Clark County, Nevada, pursuant to section 4, Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976). See appendix for description of lands sought. Because of the similarity of the issues the Board has consolidated the appeals for consideration.

The applications were filed with BLM in July and September 1979. On six of the applications the applicants checked "no" in response to the question whether the land was occupied by the applicant or the minor child and whether there were improvements on the land. On the two other applications the applicants answered these questions in the affirmative. In response to the question "Do you or your minor child claim a valid bona fide settlement," all applicants checked "yes." Each application referred to a posted notice, a copy of which was attached to the application. All notices showed that they had been recorded in Clark County and listed a receiving number and book of recordation.

BLM rejected N-26382 because the lands requested were in an area that had been classified for retention in Federal ownership, explaining that the classification segregated the land from appropriation under the agricultural land laws.

BLM rejected the other applications as follows:

The land requested in your Indian allotment application * * * [serial numbers] lies within the Eldorado Valley which is affected by Public Law 85-339 and amendments

> thereto. The act, passed on March 6, 1958, reserves approximately 126,775 acres in Eldorado Valley for acquisition by the State of Nevada, Colorado River Resources Commission. Consequently, the land is not subject to entry under the agricultural land laws and the application is hereby rejected.

In their statements of reasons the appellants contend that the public laws and agricultural land laws cannot supersede their allotment claims. They cite 25 U.S.C. § 334, "44 C.F.R. 2212 part 3" (apparently should be 43 CFR 2212 (1978)), Choats v. Trapp, 224 U.S. 413 (1912), 1/ and the Fifth Amendment to the United States Constitution.

Item 10 of the application form, after asking the applicant to indicate whether there was a claim of bona fide settlement, states: "(Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended, until classified as suitable * * *)."

There is no information or credible evidence to show that any of the applicants have, in fact, physically settled upon the lands applied for, and, particularly, that any alleged settlement was initiated prior to the first general order of withdrawal, Exec. Order No. 6910, November 26, 1934, supra. It is well established that no rights of Indians are violated by the withdrawal of public lands from settlement and the requirement that such lands be classified pursuant to section 7, Taylor Grazing Act, 43 U.S.C. § 315f (1976), before the public lands can be allotted to an Indian under section 4 of the General Allotment Act, supra. Pallin v. United States, 496 F.2d 27 (9th Cir. 1974); Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969); Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012 (1968). Nor is there a violation of any rights of the Indian if an allotment application is denied where the land is not classified for allotment. Finch v. United States, supra. Also, regulation 43 CFR 2530.0-3(c) provides that public land withdrawn by Exec. Order No. 6910, supra, and within a grazing district established under section 1 of the Taylor Grazing Act, 43 U.S.C. § 315 (1976), is not subject to settlement under section 4 of the General Allotment Act, supra, until such settlement has been authorized by classification. All public land in Clark County, Nevada, was placed in Nevada Grazing District No. 5, by Departmental order of November 3, 1936 (1 FR 1748 (Nov. 7, 1936)).

The lands requested in N-26382, the SE 1/4 of sec. 18, T. 23 S., R. 63 E., Mount Diablo meridian, were classified for multiple use management, and the notice of classification was published in the Federal Register, vol. 34, at 14084-85, Sept. 5, 1969. The notice states:

1/ The Indian allotment case at 224 U.S. 413 is Heckman v. United States.

Notice of Classification of Public Lands
for Multiple-Use Management

August 14, 1969

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and to the regulations in 43 CFR Parts 2410 and 2411, the public lands within the area described below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 U.S.C. Pts. 7 and 9; 25 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) and the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws, with the exception contained in paragraph 3. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

The description of the segregated lands includes the lands requested by application N-26382.

[1] Publication in the Federal Register of a notice of classification pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-1413 (1976), and the regulations in 43 CFR Subparts 2410 and 2411, will segregate the affected land to the extent indicated in the notice. Samuel Lee Gifford, 53 IBLA 23 (1981); Robert Dale Marston, 51 IBLA 115 (1980); United States v. Rodgers, 32 IBLA 77 (1977). Publication in the Federal Register of a notice of a classification under the Classification and Multiple Use Act will segregate the lands described from other forms of disposal unless the classification provides specifically that the lands shall remain open for certain forms of disposal. Robert Dale Marston, supra; H. E. Baldwin, 3 IBLA 71 (1971). The notice, published September 5, 1969, segregated the lands described from disposal under the agricultural land laws, including 25 U.S.C. § 334 (1976). The applicant has not shown that she occupied the lands or placed improvements thereon prior to the time the land was no longer available for entry. BLM properly rejected N-26382.

BLM rejected applications N-25334, N-26379, N-26380, N-26384, N-26385, N-26386, and N-26387 because the lands requested lie within the Eldorado Valley, which was reserved by the Act of March 6, 1958, 72 Stat. 31, for acquisition by the State of Nevada, Colorado River Commission. This Act authorized and directed the Secretary to segregate, from all forms of entry under the public land laws during a period of 5 years from and after the effective date of the Act, 126,775 acres of land in the State of Nevada including the lands sought by appellants all

of which is in the south half, T. 23 S., R. 63 E., Mount Diablo meridian. The Colorado River Commission was allowed to select lands from those segregated. The period of time for selecting the lands was extended to 10 years by the Act of October 10, 1962, 76 Stat. 804.

Section 3 of the Act of March 6, 1958, as amended, provides:

> Sec. 3 The Commission, acting on behalf of the State, is hereby given the option, after compliance with all of the provisions of this Act and any regulations promulgated hereunder, of having patented to the state by the Secretary all or portions of the lands within the transfer area. Such option may be exercised at any time during the ten-year period of segregation established in section 2, but the filing of any application for the conveyance of title to any lands within the transfer area, if received by the Secretary from the Commission prior to the expiration of such period, shall have the effect of extending the period of segregation of such lands from all forms of entry under the public land laws until such application is finally disposed of by the Secretary. [Emphasis added.]

BLM records show that portions of T. 23 S., R. 63 E., were segregated from entry by Public Land Order (PLO) No. 339 of April 7, 1958, until March 7, 1963. On October 10, 1963, PLO 3246 extended the segregative effect to March 6, 1968. In an application to the Secretary of the Interior dated March 1, 1968, the Colorado River Commission requested the transfer and conveyance of certain lands in T. 23 S., R. 63 E., including sec. 25, the SW 1/4 of which was requested in N-26380. Secs. 20 and 21 are not described as a part of the transfer area in the application of the Colorado River Commission. The filing of the application by the Commission effectively segregated sec. 25 in accordance with section 3 of the Act of March 6, 1958. The lands remain segregated because apparently there has been no final disposition of the application.

[2] Section 4 of the Act of February 8, 1887, supra, authorized the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Thurman Banks, 22 IBLA 205 (1975). In the present case, the lands were "appropriated" when they were segregated under the Act of March 6, 1958, supra. Furthermore, appellant Jackie Lavern Jarman has not made "settlement" as required by the Act. His application shows that he had neither occupied the land nor placed improvements on it.

Application N-26380 was filed on September 27, 1979 (at which time no settlement had been initiated), years after the segregation of the land in issue. An application for an Indian allotment is properly

rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act at the time the application is filed. Thurman Banks, supra.

The authority cited in the statement of reasons is not in point because the instant case involves land which was segregated from all forms of entry under the public land laws at the time appellant's application was filed, and the application was therefore properly rejected by BLM.

[3] The remaining six applications, N-25334, N-26379, and N-26384 through N-26387, involve secs. 20 and 21 (T. 23 S., R. 63 E.), segregated under the Act of March 6, 1958 (provides for acquisition by the State of Nevada, Colorado River Commission), for acquisition by the State of Nevada, and they are so listed on BLM's serial register page Nev - 048100. While the files before us contain no applications by the State covering these lands, the files also contain no formal revocation of the segregation. Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn unless there is a revocation or modification of the withdrawal. Tenneco Oil Co., 8 IBLA 282 (1972). We must conclude therefore, that these lands are not open to entry.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge

APPENDIX

The lands sought, all located in T. 23 S., R. 63 E., Mount Diablo meridian, are as follows:

IBLA 80-106 N-25334 William Milton, Jr., Cordell SW 1/4 sec. 21

IBLA 80-335 N-26384 Eldon Eugene Morgan NE 1/4 sec. 20

IBLA 80-338 N-26385 Myrna June Morgan SE 1/4 sec. 20

N-26386 Myrna June Morgan for minor son Richard Eugene Morgan NW 1/4 sec. 20

N-26387 Myrna June Morgan for minor daughter Kelly June Morgan SW 1/4 sec. 20

IBLA 80-339 N-26379 Jackie Lavern Jarman for minor nephew Phillip O. C. Gifford NW 1/4 sec. 21

N-26380 Jackie Lavern Jarman for minor niece Alisha Koi Gifford SW 1/4 sec. 25